

MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC ATMOSPHERIC ADMINISTRATION
AND
U.S. ARMY CORPS OF ENGINEERS

ARTICLE I - PURPOSE AND AUTHORITY

This two-way Memorandum of Agreement (MOA) is entered into by and between the U.S. Army Corps of Engineers (USACE) and the National Oceanic and Atmospheric Administration (NOAA) (collectively "parties") for the purpose of establishing a framework governing the respective responsibilities for the provision of goods and services as described in ARTICLE II below. The parties anticipate that any Interagency Agreements under this MOA will be entered into pursuant to the Economy in Government Act (31 U.S.C. § 1535) and pursuant to 15 U.S.C. § 313 and 49 U.S.C. § 44720 (the Department of Commerce's project authorities) and 10 U.S.C. § 2358, the Department of Defense's authority for joint research and development. Should specific transfer authority exist for specific work to be performed under an Interagency Agreement, the parties shall discuss the applicability of the specific authority and use that transfer authority as required by the Economy Act.

ARTICLE II – SCOPE

Goods and services that USACE may provide under this MOA include planning; engineering and design; construction; project management; real property and related services (including real property validation, planning; sustainability assessment; facility condition assessment, and Sustainment Management System (SMS) implementation); survey and mapping data and support; , environmental assessment and restoration; hazardous and toxic materials removal; research and development; energy audit; training; stream gaging; technical information and assistance including real-time reservoir levels and release information and reservoir operating rules and associated manuals; and such other related goods or services as may be agreed upon in the future.

b. Goods and services that NOAA may provide under this MOA include hydrometeorological report(s) - including rainfall monitoring; hydrologic, weather, and climate forecasting applications; hydrographic surveying; technical information and assistance; technology support; charting; research and development, and such other related goods or services as may be agreed upon in the future.

c. Nothing in this MOA shall be construed to require either party to use the other party or to require either party to provide any goods or services to the other party, except as may be set forth in Interagency Agreements (IA(s)).

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between USACE and NOAA, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on IAs.

ARTICLE IV -INTERAGENCY AGREEMENTS (IAs)

a. In response to requests from one party (the "Ordering Agency") for the other party's (the "Servicing Agency") goods and services, the parties will develop mutually agreed upon written IAs that detail the specific tasks to be completed. Those IAs must be on either Treasury Form 7600B or a similar document (e.g., Department of Defense Form 1144) and as required in NOAA Economy Act templates (*Economy Act Agreements for Purchasing Goods or Services* and *Economy Act Agreements for Providing Goods or Services*). By executing an IA both Parties certify that the following Economy Act requirements have been met:

1. The Ordering Agency has determined that funds are available;
2. The Ordering Agency has determined that the order is in the best interest of the United States Government;
3. The Servicing Agency has determined that it is able to provide or get by contract the ordered goods or services; and
4. The Ordering Agency has determined that the ordered goods or services cannot be provided by contract as conveniently or economically by a commercial enterprise.

By executing an IA both Parties also certify that any required written Economy Act Determinations and Findings (D&F) have been completed.

IAs must include:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the amount of funds required and available to accomplish the scope of work;
- the Ordering Agency's fund citation and the date upon which the cited funds expire for obligation purposes;
- the names of individual project managers;
- the types of contracts to be used (if known);
- the types and frequencies of reports;
- identification of which party is to be responsible for government-furnished equipment; contract administration; records maintenance; rights to data, software, and intellectual property; and contract audits;
- procedures for amending or modifying the IA;
- Such other particulars as are necessary to describe clearly the obligations of the Parties with respect to the requested goods and services.

ARTICLE V - RESPONSIBILITIES OF THE PARTIES

a. Responsibilities of the Servicing Agency under each IA

(1) The Servicing Agency shall provide goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in IAs and implementing arrangements.

(2) The Servicing Agency shall ensure that only authorized Servicing Agency representatives sign IAs.

(3) The Servicing Agency shall use its best efforts to provide goods or services either by contract or in-house effort.

(4) The Servicing Agency shall provide detailed periodic progress, financial, and other reports as outlined in the IA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

(5) The Servicing Agency shall inform the Ordering Agency of all contracts entered into under each IA.

b. Responsibilities of the Ordering Agency under each IA

(1) The Ordering Agency shall certify, prior to the execution of each IA under this MOA, that the IA complies with the requirements of the Economy Act, and that any required written Economy Act D&F has been completed.

(2) The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this MOA and shall certify, at the time of signature of an IA, the availability of funds necessary to accomplish that IA.

(3) The Ordering Agency shall ensure that only authorized Ordering Agency representatives sign IAs.

(4) The Ordering Agency shall develop draft IAs to include scope of work statements.

(5) The Ordering Agency shall obtain for the Servicing Agency all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from State and local agencies, as necessary during the execution of each IA.

ARTICLE VI - FUNDING

a. This MOA does not document the obligation of funds between the Parties. Any obligation of funds in support of this MOA will be accomplished by executing an IA in accordance with Article IV.

The Ordering Agency shall pay all costs associated with the Servicing Agency's provision of goods or services under this MOA. The Servicing Agency will draw payments through the Intra-Governmental Payment and Collection (IPAC) system on a monthly basis in amounts equal to the monthly invoice amount. Bills rendered will not be subject to audit in advance of payment.

b. If the Servicing Agency forecasts its actual costs under an IA to exceed the amount of funds available under that IA, it shall promptly notify the Ordering Agency of the amount of additional funds necessary to complete the work under that IA. The Ordering Agency shall either provide the additional funds to the Servicing Agency; require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work.

c. Within 90 days of completing the work under an IA, the Servicing Agency shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the Servicing Agency shall return to the Ordering Agency any funds advanced in excess of the actual costs as then known, or the Ordering Agency shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the Ordering Agency's duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

ARTICLE VII - APPLICABLE LAWS

The applicable statutes, regulations, directives, and procedures of the United States shall govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all contract work undertaken by USACE shall be governed by Corps policies and procedures and all contract work undertaken by NOAA shall be governed by NOAA policies and procedures.

ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

a. Corps of Engineers Contracting

(1) All claims and disputes by contractors arising under or relating to contracts awarded by USACE shall be resolved in accordance with Federal law and the terms of the individual contract. USACE shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 7101). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

(2) USACE shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. USACE shall notify NOAA of any such litigation and afford NOAA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

b. NOAA Contracting

(1) All claims and disputes by contractors arising under or relating to contracts awarded by NOAA shall be resolved in accordance with Federal law and the terms of the individual contract. NOAA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 601-613).

(2) NOAA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. NOAA shall notify USACE of any such litigation and afford USACE an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

ARTICLE IX - DISPUTE RESOLUTION

Should disagreements arise on the interpretation of the provisions of this agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement or interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

If a dispute related to funding remains unresolved for more than 30 calendar days after the parties have engaged in an escalation of the dispute, it will be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 10, available at <http://www.fms.treas.gov/tfm/index.html>.

ARTICLE X - RESPONSIBILITY FOR COSTS

a. If liability of any kind is imposed on the United States relating to the Servicing Agency's provision of goods or services under this MOA, the Servicing Agency will accept accountability for its actions, but the Ordering Agency shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming, or other means. Should the Ordering Agency have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, it remains responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

b. Notwithstanding the above, this MOA does not confer any liability upon the Ordering Agency for claims payable by the Servicing Agency under the Federal Torts Claims Act. Nothing in this Agreement is intended or will be construed to create any rights or remedies for any third party, and no third party is intended to be a beneficiary of this Agreement.

ARTICLE XI - PUBLIC INFORMATION

a. Justification and explanation of NOAA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of NOAA. USACE may provide, upon request, any assistance necessary to support NOAA's justification or explanations. In general, NOAA is responsible for all public information. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. NOAA or USACE shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAs under this MOA.

b. Justification and explanation of USACE programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of USACE. NOAA may provide, upon request, any assistance necessary to support USACE justification or explanations. In general, USACE is responsible for all public information. NOAA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. USACE or NOAA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to IAs under this MOA.

ARTICLE XII – MISCELLANEOUS

a. Other Relationships or Obligations

(1) This MOA shall not affect any pre-existing or independent relationships or obligations between NOAA and USACE.

b. Survival

(1) The provisions of this MOA that require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

c. Severability

(1) If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

d. Transferability

(1) This MOA is not transferable except with the written consent of the Parties.

ARTICLE XIII – REQUIRED REVIEWS

The Parties will review this MOA annually on or around the anniversary of its effective date for financial impacts and triennially in its entirety.

ARTICLE XIV - AMENDMENT, MODIFICATION, AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this MOA by providing at least 180 days written notice to the other party. In the event of termination, in all circumstances the Ordering Agency shall continue to be responsible for all costs incurred by the Servicing Agency under this MOA, and for the costs of closing out or transferring any on-going contracts.

ARTICLE XV - EFFECTIVE DATE

This MOA shall become effective when signed by both NOAA and USACE.

ARTICLE XVI – EXPIRATION DATE

This MOA expires nine years after effective date.

ARTICLE XVII – CANCELLATION OF PREVIOUS AGREEMENT

This MOA cancels and supersedes the previously signed agreement between the same Parties executed on October 12, 2004.

AGREED:

For NOAA


Edward C. Horton
Chief Administrative Officer

For the U.S. Army Corps of Engineers


James C. Dalton, P.E.
Director of Civil Works

DATE: 4/6/2017 DATE: 17 Apr 2017

For NOAA

A handwritten signature in black ink, appearing to read "Louis W. Uccellini", written over a horizontal line.

Dr. Louis W. Uccellini
NWS, Assistant Administrator

DATE: 3/13/17